Filed 12/29/04 P. v. Nuualofa CA1/5
Opinion after rehearing

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, **Plaintiff and Respondent,** **v.** **TANIELU NUUALOFA,** **Defendant and Defendant.**	**A099808** **(San Mateo County Super. Ct. No. SC50165A)**

Tanielu Nuualofa appeals the judgment imposed following his conviction for failing to inform a law enforcement agency of his change of address or location, in violation of Penal Code[1] section 290, subdivision (f)(1) (hereafter section 290(f)(1)). The jury also found true allegations that he had sustained three prior convictions within the meaning of section 1170.12, subdivision (c)(2) (the three strikes law). The trial court later refused to strike defendant's prior convictions for purposes of the three strikes law and sentenced him to a 25-year-to-life prison term. Defendant raises a host of challenges to the conviction and sentence. We affirm.

[1] All undesignated section references are to the Penal Code.

BACKGROUND

The Prosecution Case

On March 6, 1987, defendant was convicted of felony sex offenses requiring lifetime registration as a sex offender pursuant to section 290.[2] Section 290 requires persons who have been convicted of certain crimes to register with local law enforcement entities, according to specific time frames and conditions. Among other provisions, section 290(f)(1) states that a sex offender who changes his or her "residence address or location . . . shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location."

In May 1991, before defendant was released on parole from prison for the prior sex offenses, he was notified by a correctional counselor (William Emmens) of the duty to register as a sex offender. Emmens presented defendant with a form entitled "Notice of Registration Requirement," which read in part: "I must upon changing my residence inform in writing within 10 days [the] law enforcement agency with which I last registered."[3] The notice bore defendant's name and signature. Emmens signed the form, certifying that he notified defendant of his duty to register as a sex offender. Emmens did not recognize defendant but recalled his name because it was unusual. It was Emmens's custom and practice to explain the registration requirements in layman's terms "to make

---

[2] The 1987 conviction was for three felony counts of lewd and lascivious conduct by force with a child under the age of 14 (§ 288, subd. (b)). Defendant was convicted of having forced sexual intercourse with his daughter, beginning in 1984, when she was 12.

[3] At the time of defendant's 1991 parole from prison, the pertinent portion of section 290, subdivision (f) allowed a registrant "10 days" to inform the law enforcement agency or agencies where the registrant had last registered of his or her "new address." (Stats. 1989, ch. 1407, § 4, p. 6194.) Effective January 1, 1997, subdivision (f) was changed to allow a registrant "*five working days*" to notify the agency or agencies where last registered of his or her new address. (Stats. 1996, ch. 909, § 2, p. 4684, italics added.) Effective January 1, 1999, the subdivision was changed to allow a registrant five working days to notify the agency or agencies where last registered of his or her "new address *or location*." (Stats. 1998, ch. 929, § 1, italics added.)

sure [the registrants] understood . . . the requirements of their parole." He would go through each section of the form with each inmate he counseled.

On August 2, 1991, defendant registered at 265 Gateway, No. 212, in Pacifica. Defendant signed the registration form and acknowledgment, which articulated the lifetime obligation to register. On September 10, 1991, defendant registered at 525 Second Lane, South San Francisco. Defendant registered at the same address on May 3, 1993. On November 11, 1995, defendant filed a registration change of address. The form indicated that defendant was moving out of that jurisdiction and designated a new address of 57 Hare Street in San Francisco. Defendant reregistered in San Francisco with the same address on November 13, 1995. On May 16, 1996, defendant registered at 587 Sylvan Street[4] in Daly City. Defendant vacated that address on June 1 or 2, 1998. There was no record of defendant informing the Daly City Police Department in writing that he had moved away from Daly City.

When defendant registered as a sex offender with the Daly City Police Department on May 16, 1996, a police officer (Gregory Harman) interviewed defendant in English for five to ten minutes. The officer asked defendant where he was living, his name, personal information, the circumstances surrounding his arrest and conviction. The officer did not have any difficulty understanding defendant nor did it appear that defendant had difficulty understanding the officer. The officer specifically recalled telling defendant that if he left Daly City he would have to notify Daly City in writing that he was leaving the jurisdiction. The officer told defendant to read, sign, and date the sex offender registration form. The notification on the sex offender registration form read "I must upon changing my residence inform in writing within 10 days the law enforcement agency with which I last registered as a sex offender." Defendant did not ask Officer Harman any questions. He looked at the form, signed it, and returned it to Officer Harman.

---

[4] The reporter's transcript indicates that the street name of the Daly City address was "Sullivan Street." Documents in the clerk's transcript indicate the name of the street was actually "Sylvan," and we refer to it as such to avoid confusion.

In March 2000, a Daly City police detective (Gregg Oglesby) reviewed defendant's sex offender registration file and discovered that defendant had not registered since May 16, 1996. The address of the 1996 registration was 587 Sylvan Street. In April 2000, Detective Oglesby went to the Sylvan Street address and found defendant no longer lived there. The officer found another family had been living in the apartment since March 1999.

In June 2001, defendant was arrested on a warrant issued because of defendant's noncompliance with the registration statute. At the time of booking, defendant gave his address as 146 West Point in San Francisco. Defendant's Department of Motor Vehicles (DMV) driver's license record indicated that he obtained a driver's license on August 20, 1998. This DMV record showed an address of 1187 Oakdale Street in San Francisco. It also showed the address of 146 West Point Road in San Francisco as of August 1, 1999.

Department of Justice information showed that the last known address where defendant had registered as a sex offender was the Sylvan Street address in Daly City. The prosecution submitted a section 969b "prison packet," a fingerprint card, and an information with a plea in case number C17086 to prove defendant's prior convictions.

The Defense Case

Defendant testified at trial that he was born in Samoa and that he stopped going to school at age 13. Although he spoke a little English, he had no formal education in English. After he was released from prison, defendant was on parole for three years. He worked building houses and communicated with his hands at times. When defendant met with his parole agent, he took a family member to translate the documents. He used many different relatives to help him interpret. Defendant understood "most of the words that were read to [him]" just before his release, but he gave the papers to his cousin. On subsequent trips to police departments, his family members helped him with the registration paperwork.

When defendant began living with his sister at the apartment on Sylvan Street in Daly City, the sister talked to the landlady about the lease, then the three of them

discussed it. Defendant admitted that all of his conversations with his landlady were in English. They talked about the amount of rent and when rent was due.

At some point in time, defendant's sister was not able to pay her portion of the rent, and defendant did not have enough money to cover the shortfall. Defendant moved out of the apartment and began living in his van. He lived in his van for two years. He was not living in the Daly City area and did not have a place where he could park his van day to day.

Defendant knew that he was required to register as a sex offender if he moved to a new address. He also knew that he had to register as a sex offender when he moved into a new city. He recalled that "there were people helping [him] out to fill [the registration forms] out." He testified that he thought he was supposed to "renew [his] paper to where [he was] leaving from and where [he was] going." He learned of this requirement "at first." At a police department, someone told defendant what he should do if he had to leave an address and did not have a new address. Defendant was told that information "[t]he year that I came outside from [Atascadero State] hospital." Defendant did not read the registration documents that he signed at Atascadero because he could not understand what the papers said. Defendant did not remember that registration was a lifetime commitment.

Defendant registered with the South San Francisco Police Department in 1991 because he understood that when he moved to a new city, he had to register as a sex offender. Defendant admitted that he knew that he had to tell the South San Francisco Police Department that he was moving out of that city. He went to the South San Francisco Police Department on November 11, 1995, in order to notify the police department of his move. Defendant registered with the Daly City Police Department when he moved to 587 Sylvan Street in Daly City in November 1996. After he left Daly City, he did not register as a sex offender with any other police departments.

Defendant testified that the 1187 Oakdale Street address was a friend's address that he used for mailing purposes. In August 1999, after defendant had been living in his van for about two years, he moved to 146 West Point Road in San Francisco. When

defendant began living at the West Point address, he notified the DMV of the change of his address, but he was so "overjoyed" that he had found a home for himself and his children that he "probably forgot" to register under section 290 at that address. Defendant never intentionally violated the registration laws. He "just completely forgot."

On July 10, 2000, he reported to the San Francisco Police Department that his license plate had been stolen, provided a contact address at 146 West Point Road in San Francisco, and gave the police his driver's license.

DISCUSSION

I. *The Defense of Forgetting to Register*

Defendant unsuccessfully sought to persuade the trial court that genuinely forgetting to comply is a defense to the charge of violating section 290(f)(1). The trial court provided the jury a special instruction proffered by the People: "If you are convinced beyond a reasonable doubt that the defendant had actual knowledge of the duty to inform in writing within 10 working days the law enforcement agency with which he last registered of his new address or location upon changing his residence, it is not a defense to a failure to perform that duty that the defendant forgot to do so." The special instruction was prepared in compliance with *People v. Cox* (2002) 94 Cal.App.4th 1371, which had been decided shortly before the commencement of defendant's trial.

Defendant challenges this special instruction on appeal. Subsequent to the trial in this matter, the California Supreme Court held that genuinely forgetting is not a defense for failing to comply with section 290. (*People v. Barker* (2004) 34 Cal.4th 345, 348.) Thus, the giving of the challenged special instruction was not error.[5]

II. *The Definition of "Location"*

Section 290(f)(1) provides, in pertinent part, "If any person who is required to register pursuant to this section changes his or her residence address or location . . . the

---

[5] On appeal, defendant also argues that the court's instructions defining "willfully," "knowingly," and "general intent" undercut the defense of forgetting to notify authorities, which is unavailable in this case. We reject these arguments for the same reason we reject the argument that the special instruction violated his right to present this defense.

person shall inform, in writing . . . the law enforcement agency or agencies with which he or she last registered of the new address or location." Defendant registered when he moved to the Sylvan Street address in May 1996. He moved from Sylvan Street in June 1998 and provided no notice to the Daly City authorities at any time after his departure. For a period of time following his move, defendant was homeless, living in his van. In August 1998, defendant informed the DMV that he resided on Oakdale in San Francisco, and, in August 1999, defendant moved to West Point Road in San Francisco. He never registered at either San Francisco address.

Defendant argues that section 290(f)(1) imposes an obligation to notify authorities of a move away from one residence only after the registrant has obtained a new address or location. He notes that the evidence is undisputed that he was homeless and had no new *address* for a substantial period of time after leaving Sylvan Street in June 1998. He then argues that he cannot be convicted for failing to notify of a new *location* following his departure from Sylvan Street because (1) there was insufficient evidence that he had actual knowledge of the duty to inform of a new location; and (2) the term "location" is unconstitutionally vague.

His argument fails because its premise is incorrect. The duty to notify under section 290(f)(1) arises five days after a registrant moves from his or her last registered address. (*People v. Annin* (2004) 116 Cal.App.4th 725, 735-737.) As *Annin* held, under defendant's interpretation of the law, a registrant "would have no duty, when leaving his last registered address, to inform the [authorities] that he can no longer be found there, or to provide any information at all concerning his whereabouts, as long as he continues to change, on a daily basis, the place where he or she stays . . . . [T]he time period during which law enforcement agencies would have incorrect, outdated information concerning the offender's whereabouts could be extended from five days to a period of indefinite duration, controlled entirely by the offender, allowing the offender simply to disappear, as defendant did here, for lengthy periods." (*Id.* at p. 735.) We agree with *Annin* that such an interpretation would defeat the purpose of the registration statute and, hence, we refuse to adopt it. (*Id.* at p. 736.)

We need not consider the situation where a registrant remains a transient for the entire time between his departure from his last residence until his arrest. Defendant had at least one address following the move from Sylvan Street and did not comply with section 290(f)(1). (*People v. Annin, supra,* 116 Cal.App.4th at pp. 738-739.)

III. *The Right to a Jury Trial as to the Felony Convictions*

In 1987, defendant suffered three felony convictions for violations of section 288, subdivision (b), lewd and lascivious conduct by force on a child under the age of 14. These prior convictions played three distinct roles in the case. First, because the registration requirement under section 290 was imposed as a result of these felony convictions, rather than misdemeanor convictions, a failure to comply constituted a felony. In addition, these prior convictions were alleged as prior strikes, under the three strikes law (§ 1170.12) and found true by the jury. Finally, when defendant testified, the prosecutor was permitted to impeach him with these convictions. Defendant raises contentions directed at the first two uses of the convictions. He argues that he was entitled to a jury trial on the nature of the conviction (felony or misdemeanor) that triggered the registration requirement. Further, he argues he was entitled to a jury trial as to the identity of the perpetrator of the alleged strikes and as to whether these strikes were, in fact, "serious" felonies. We reject each contention.

A. *The Nature of the Convictions Requiring Registration*

Defendant argues that the felony nature of the conviction requiring registration is one element of the crime charged, and, so, he is entitled to a jury trial on this issue. He contends there was no evidence presented that *felony* convictions triggered the registration requirement, and no reference in the jury instructions or the verdict to the nature of the triggering convictions.

Directly before the first witness testified, the prosecutor read into the record the following stipulation entered into by the parties: "On March 6, 1987, . . . defendant was convicted of a sex offense requiring lifetime registration as a sex offender pursuant to . . .

section 290."[6] As defendant points out, the stipulation provides no information concerning the nature of the sex offense conviction. However, evidence was also presented that in 1987 defendant was convicted of three felony sex offenses and was sentenced to prison. Despite defendant's argument to the contrary, no limiting instruction was given by the court at the time this evidence was introduced, and the jury could properly infer from this evidence that one of these convictions was the one referenced in the stipulation.

If we assume arguendo that defendant is correct, that the felony nature of the 1987 sex conviction was an element of the crime and had to be submitted to the jury, then the jury instructions provided were clearly inadequate. Further, a jury instruction that omits an element of an offense requires reversal unless the error was harmless beyond a reasonable doubt. (*People v. Flood* (1998) 18 Cal.4th 470, 503.) However, if no rational jury could have found the missing element unproven, the error is harmless beyond a reasonable doubt. (*People v. Ortiz* (2002) 101 Cal.App.4th 410, 416.) Here, there is no doubt the error was harmless. (Cf. *People v. Kelii* (1999) 21 Cal.4th 452, 459 (conc. & dis. opn. of Werdegar, J.).) The stipulation established that defendant's registration requirement stemmed from a conviction suffered in 1987. The evidence, including defendant's trial testimony, was undisputed that in 1987 he was convicted of three sex offenses under section 288, subdivision (b). Finally, the language of that Penal Code statute makes clear that violations of section 288, subdivision (b) are straight felonies. There was, in fact, no factual dispute to submit to the jury. Defendant's claim fails.

---

[6] This stipulation was also presented to the jury in written form as People's Exhibit 2. Prior to reading the stipulation to the jury, the prosecutor stated: "Your Honor, the People would, since evidence is now commenced, like to *re-read* into the record the stipulation that has been entered into by both the parties." This suggests that there had been an earlier on-the-record discussion between the trial court and counsel, outside the presence of the jury, about the stipulation. Because that portion of the record has not been provided to us, we are unable to determine whether any discussion occurred concerning the reasons for the precise language of the stipulation, including the failure to specify the felony nature of the triggering conviction.

B. *The Strike Convictions*

Defendant argues that he was deprived of his right to a jury on two different elements of the strike allegations: (1) that he was the person convicted of the strikes; and (2) that the strikes were, in fact, serious felonies. We disagree.

There is no federal constitutional right to a jury trial on the fact of a prior conviction. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490.) As the California Supreme Court has stated: "The right, if any, to a jury trial of prior conviction allegations derives from sections 1025 and 1158, not from the state or federal Constitutions. [Citations.]" (*People v. Epps* (2001) 25 Cal.4th 19, 23.) And, section 1025, subdivision (c) specifically refutes one of defendant's contentions: "[T]he question of whether . . . defendant is the person who has suffered the prior conviction shall be tried by the court without a jury."

The trial court followed the correct procedure in this case. Outside the presence of the jury, the prosecutor informed the court that the cross-examination of defendant was complete. The court then stated that it was an appropriate time to conduct the hearing to determine the identity of the person who had committed the charged prior felonies. Both counsel indicated they had no further evidence to present on the question, and the court then determined that defendant "was the person whose name was on the felony conviction records admitted in the case." The court then fulfilled its obligation to "instruct the jury to the effect that . . . defendant is the person whose name appears on the documents admitted to establish the conviction." (*People v. Kelii, supra,* 21 Cal.4th at pp. 458-459.) No error is demonstrated.

Defendant's second contention also fails; he has no right to a jury determination as to whether a prior felony conviction qualifies as a serious felony. (*People v. Kelii, supra,* 21 Cal.4th at p. 454.)

IV. *Incompetence of Counsel*

Defendant contends counsel was ineffective for failing to assert a defense based upon the privilege against self-incrimination. He argues this defense applied because his compliance with section 290(f)(1) would have provided "the police with information

which they could have used to prosecute him for as many counts of violation of subdivision (f)(1) as there were days between his obtaining a 'location' and reporting it."

"The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." (*Strickland v. Washington* (1984) 466 U.S. 668, 686.) "To establish ineffective assistance of counsel, [defendant] must demonstrate that (1) counsel's representation was deficient in falling below an objective standard of reasonableness under prevailing professional norms, and (2) counsel's deficient representation subjected [defendant] to prejudice, i.e., there is a reasonable probability that, but for counsel's failings, the result would have been more favorable to [defendant]." (*In re Wilson* (1992) 3 Cal.4th 945, 950.)

Because the privilege against self-incrimination was not available to defendant as a defense, counsel is not ineffective for failing to raise it. We conclude that *California v. Byers* (1971) 402 U.S. 424 governs, not the two cases relied on by defendant: *Marchetti v. United States* (1968) 390 U.S. 39 and *Grosso v. United States* (1968) 390 U.S. 62. In *Byers,* the high court concluded that a California law requiring a driver involved in an accident to stop and identify himself did not violate the privilege. The compulsory accident-reporting statute, "unlike registration schemes aimed at identifying criminal behavior, . . . was essentially regulatory, its purpose being 'to promote the satisfaction of civil liabilities arising from automobile accidents.' . . . '[T]he statutory purpose is noncriminal and self-reporting is indispensable to its fulfillment.' " (*People v. Kroncke* (1999) 70 Cal.App.4th 1535, 1549, citing *Byers*, at pp. 430-431.) Section 290's registration requirement is essentially regulatory and designed to accomplish the government's goal by mandating certain affirmative acts. (*In re Alva* (2004) 33 Cal.4th 254, 279; *Wright v. Superior Court* (1997) 15 Cal.4th 521, 527.) Providing an address and updating it periodically is not innately unlawful. When defendant left Sylvan Street without notifying the authorities, he violated section 290. A subsequent registration would not have "incriminated" him and would have assisted prosecutors only by

revealing his current location. The registration requirements of section 290 do not violate the Fifth Amendment right against self-incrimination.

V. *Section 654*

Before defendant was prosecuted in the current case in San Mateo County, San Francisco County prosecuted him for failing to register pursuant to section 290, subdivision (a)(1)(A) when he moved into a San Francisco address. The record before us includes no records from the San Francisco County prosecution. However, based on limited references to that earlier prosecution in the appellate record and based on the briefing of the parties in this appeal, it appears undisputed that, following his guilty plea in the San Francisco case, defendant was placed on three year's probation and ordered to serve a 90-day jail sentence. Defendant relies on a recent California Supreme Court interpretation of section 654 (*People v. Britt* (2004) 32 Cal.4th 944) to argue, first, that the San Mateo prosecution was barred by the earlier prosecution, and, alternatively, even if the San Mateo prosecution was proper, no additional sentence could be imposed for that conviction.

Section 654, subdivision (a) provides, "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other." This provision has been construed by our Supreme Court to protect an accused in two different ways: it precludes both multiple prosecutions and multiple punishments. (*People v. Britt*, *supra,* 32 Cal.4th at p. 950; *Neal v. State of California* (1960) 55 Cal.2d 11, 21.)

In *Britt,* the defendant was subject to the identical registration requirement imposed on defendant. When Britt moved from Sacramento to El Dorado County, he failed to notify the appropriate authorities in either county. After his conviction in Sacramento County, Britt was transferred to El Dorado County and prosecuted, convicted and sentenced in that county. (*People v. Britt*, *supra,* 32 Cal.4th at pp. 949-950.) The

Supreme Court concluded that El Dorado County violated both the multiple prosecution and multiple punishment aspects of section 654. (*Id.* at pp. 953-954, 956.)

A. *Multiple Prosecutions*

In *Kellett v. Superior Court* (1966) 63 Cal.2d 822, the defendant was first prosecuted and convicted for exhibiting a firearm in a threatening manner. The Supreme Court held that this conviction precluded a later prosecution for possession of a firearm by an ex-felon which arose from the same set of facts. "When, as here, the prosecution is or should be aware of more than one offense in which the same act or course of conduct plays a significant part, all such offenses must be prosecuted in a single proceeding unless joinder is prohibited or severance permitted for good cause. Failure to unite all such offenses will result in a bar to subsequent prosecution of any offense omitted if the initial proceedings culminate in either acquittal or conviction and sentence." (*Id.* at p. 827, fn. omitted.) *Britt* applied *Kellett* to bar serial prosecutions of a man who had failed to notify authorities both that he had moved from one address and that he lived at another. (*People v. Britt, supra,* 32 Cal.4th at pp. 954-956.)

In *Britt,* the court noted that *Kellett* is subject to two limitations. The multiple prosecution rule applies only where the two different offenses could have been joined in one prosecution and "only when 'the prosecution is or should be aware of more than one offense . . . .' [Citation.]" (*People v. Britt, supra,* 32 Cal.4th at pp. 954-955.)

Defendant argues that *Britt* requires reversal here because he, like Britt, was subject to two prosecutions for an indivisible pair of omissions. In the trial court, however, defendant never raised this issue. Defendant relies on *People v. Yeoman* (2003) 31 Cal.4th 93 to argue that we should decide the issue despite the failure to raise it below because the challenge rests on "*uncontested* facts, [rendering it] appropriate to treat it as a question of law, which can be raised and resolved for the first time on appeal." (Italics in original.) We disagree that this challenge relies on undisputed facts. In *Britt,* the court expressly conditioned its decision on the fact that there had only been a single move. (*People v. Britt, supra,* 32 Cal.4th at pp. 953-954.) Here, the facts relevant to this issue are not undisputed. In August 1998, not long after leaving the Sylvan Street address,

defendant notified the DMV that he was residing in San Francisco on Oakdale Street. Defendant testified, however, that he never resided at that address and used it only for a mailing address. The significance of this dispute is enhanced by the lack of documentation in the record relating to the San Francisco prosecution. Because we do not know if San Francisco prosecuted defendant for failing to register his Oakdale address or his West Point residence or both, the record is inadequate for a resolution of the multiple prosecution issue. We decline to render an advisory opinion. (See *People v. Slayton* (2004) 26 Cal.4th 1076, 1084.)

Defendant's alternate argument, that trial counsel was ineffective for failing to raise the *Kellett* issue, founders for the same reason. Establishing ineffectiveness of counsel requires proof of both a deficient performance and prejudice to the defendant. (*In re Wilson, supra,* 3 Cal.4th at p. 950.) Assuming, without deciding that trial counsel's failure to raise the *Kellett* issue was deficient, we cannot conclude that this failure prejudiced defendant, because we are unable to determine from this record whether such a motion would have succeeded.[7]

B. *Multiple Punishment*

The test of whether section 654 prohibits multiple punishment is a familiar one: "Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one." (*Neal v. State of California, supra,* 55 Cal.2d at p. 19.)[8]

In *Britt,* the Supreme Court held that the defendant's "failure to notify the former jurisdiction (§ 290, subd. (f)(1)) and the failure to register in the new jurisdiction (§ 290,

---

[7] We express no opinion on the relief, if any, defendant may achieve from challenging, under section 654, the prosecution and/or sentence imposed in this case in a habeas corpus proceeding.

[8] Though defendant did not raise the multiple punishment issue below, this failure does does not forfeit the issue on appeal. (*People v. Hester* (2000) 22 Cal.4th 290, 295.)

subd. (a)(1)(A)) were means of obtaining the same objective—to prevent *any* law enforcement authority from learning of his current residence." (*People v. Britt, supra,* 32 Cal.4th at p. 952.) Defendant argues that *Britt* compels us to reverse the sentence imposed and direct the San Mateo Superior Court to stay any sentence. Again, the record fails to support such relief.

As discussed, *ante*, in *Britt* the court expressly rested its decision on the fact that there had been only a single move. (*People v. Britt, supra,* 32 Cal.4th at pp. 953-954.) Here, there is evidence from which a sentencing court could determine that defendant moved into two different residences in San Francisco and failed to register at either. If more than one move occurred, each may trigger a separate registration requirement. (*People v. Meeks* (2004) 123 Cal.App.4th 695, 705.) Since the record before us is unclear whether defendant moved into one or two residences and provides inadequate information concerning the scope of the San Francisco prosecution, defendant has failed to demonstrate that the sentence imposed violated section 654.[9]

VI. *Romero Discretion*

At sentencing, defendant asked the trial court to strike two or more of his prior strikes so that the sentence imposed would not be disproportionate to the offense he committed. The trial court refused and sentenced defendant to 25 years to life. Defendant now argues the trial court abused its discretion when it declined to strike any of the prior convictions.

---

9 In addition, even if section 654 barred sentencing on both the San Francisco and San Mateo cases, it is unclear from the record whether the San Mateo sentence is the one properly stayed. Section 654 expressly requires that the court sentence defendant on the crime carrying the heaviest potential sentence. If San Francisco did not allege defendant's prior convictions under the three strikes law, then it would appear that the San Mateo conviction would be the one carrying the longer potential term of imprisonment. Section 654 would then require that the sentence on the San Mateo case be the one imposed. (*People v. Kramer* (2002) 29 Cal.4th 720 [in determining which conviction provides for the longest potential term of imprisonment, the court should consider enhancements].)

In *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, our Supreme Court held that trial courts have discretion under section 1385 to strike prior convictions. In *People v. Williams* (1998) 17 Cal.4th 148, the court described the factors trial courts should evaluate when exercising discretion. "[T]he court in question must consider whether, in light of the nature and circumstances of [the defendant's] present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*Id.* at p. 161.) We review the trial court's decision on whether to strike a strike under the deferential abuse of discretion standard. (*People v. Carmony* (2004) 33 Cal.4th 367, 376; *People v. Garcia* (1999) 20 Cal.4th 490, 503.)

Applying that standard here, we find no error. Defendant had three prior forcible sexual assault convictions committed against his young daughter that reflected a pattern of misconduct occurring over a period of several years. In the current case, defendant moved from his last registered address and, for several years failed to register. While he was homeless for a certain period of time, he did not register even after he moved into a house in San Francisco. This was no technical violation of the registration law (see *People v. Cluff* (2001) 87 Cal.App.4th 991), but a long-term failure to comply, even though he had been informed of his duty to do so on numerous occasions.

Our Supreme Court recently reminded us of the limits of our review over trial court decisions not to strike a strike. " 'Where the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court's ruling, even if we might have ruled differently in the first instance.' [Citation]" (*People v. Carmony, supra,* 33 Cal.4th at p. 378.) Applying this standard, the trial court did not abuse its discretion in denying defendant's *Romero* motion.

DISPOSITION

The judgment is affirmed.

SIMONS, J.

We concur.

JONES, P.J.

GEMELLO, J.